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November 17, 2003

**Via Electronic Filing**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St, SW  
Washington, DC 20554

Re: Proposed Transfer of Control to News Corp of Hughes Electronics from GM, Docket No. 03-124

Dear Ms. Dortch:

We wish to place on the record this article from the trade publication *Variety*. Given that Mr. Rupert Murdoch, Mr. Chase Carey, and Mr. David DeVoe are to be on the proposed new Hughes Electronics board if this transfer is approved, we believe it is relevant to this proceeding (see SEC S-4, June 5, 2003, available at: [http://www.hughes.com/pdfs/S-4\\_6-5-03.pdf](http://www.hughes.com/pdfs/S-4_6-5-03.pdf)).

The Commission should note that these three individuals served on the board of directors of Gemstar. The former chief executives of Gemstar are now the subject of an SEC lawsuit (see: <http://www.sec.gov/litigation/complaints/comp18199.pdf>). As the article notes, there are critical corporate governance questions raised about the role of the Gemstar directors. We agree with Chairman Powell, who in testifying before Congress, said it is vital that the telecommunications sector act in a responsible and ethical manner (testimony of Chairman Powell before the Senate Commerce Committee, 7/30/02).

We urge the Commission to discuss this matter with both the SEC and the Department of Justice. Prior to the approval of any transfer of control, it is essential that the public can be assured that the proposed board members for Hughes Electronics did not fail in their oversight role in the Gemstar case.

Ms. Marlene Dortch  
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Respectfully,

Jeffrey A. Chester  
Executive Director

***Variety:***

Posted: Sun., Nov. 16, 2003, 6:00am PT

Rupe's tarnished Gem

Yuen, Leung antics created courtroom crisis

By MEREDITH AMDUR, JANET SHPRINTZ

Enron may be bigger and Martha Stewart may be more high-profile, but Gemstar-TV Guide takes the cake for plain weird in corporate scandals.

But it's not just the bizarre "catch-me-if-you-can" legal antics of company founder and disgraced former CEO Henry Yuen and his CFO Elsie Leung.

The courtroom twists in the contentious tale of how Gemstar's top duo terrorized much of the media biz (including its largest shareholder News Corp.) with patent-infringement lawsuits, only to be brought down by allegations of numbers fudging, thickens an already murky plot.

The fact that it happened under the nose of Rupert Murdoch and five News Corp.-employed board members -- who finally put a stop to the managerial shenanigans a year ago by firing Yuen and taking a \$6 billion writedown on the value of the company -- makes it even more intriguing.

At the least, it offers up a good "lessons learned" in corporate governance (or lack thereof) in one of the largest such accounting scandals to touch the media industry.

Gemstar's main business is providing a print and onscreen TV listings guide; one of its chief faults was booking unearned revenue from lawsuits it filed against rivals for allegedly violating its patents.

Two government agencies are chasing the former execs pursuing civil and criminal cases, not to mention numerous shareholder class action lawsuits. News Corp. execs that sat on the Gemstar board may well be called to testify.

That could make News Corp. look at best like a duped victim of Yuen's alleged deceit, or worse, legally responsible. Any forthcoming depositions by Gemstar board members could turn impotence into a virtual indictment for incompetent oversight.

But it's unclear whether the News Corp. execs that served on the Gemstar board at the time of the grievances (Rupert and Lachlan Murdoch, Chase Carey, Arthur Siskind and David DeVoe) could be culpable.

A derivative case filed by Gemstar seeking damages based on the wrongdoing of company officers and the board has, in fact, named the entire Gemstar board in its suit. Members of the audit and compensation committees (which includes Lachlan Murdoch) will probably be deposed.

"News Corp is not the principal wrongdoer but (the depositions) could reveal a massive break-down in the checks and balances between a board and company executives," says attorney Blair Nicholas, who is spearheading a shareholder class action suit on behalf of Bernstein Litowitz Berger & Grossmann.

To this day, Gemstar-TV Guide remains one of the few lingering miscues in an otherwise untarnished portfolio of investments at News Corp.

Murdoch's company took control of the entity it jointly owned with John Malone's Liberty Media in 2000 after Malone swapped his stake in the newly merged Gemstar-TV Guide for shares in parent News Corp.

The enigmatic Yuen emerged from the deal with a guaranteed five-year contract -- one that took News Corp. a year of evidence-gathering to expel him from, since he also had veto power over his board.

Back in 2000, Gemstar-TV Guide traded at \$100 a share; today it languishes around \$5 as a new management team under the guidance of former News Corp. exec Jeff Shell works to restore confidence in the electronic program guide and restart its core TV Guide magazine biz.

Under closer scrutiny by its parent and having notched up a recent round of cable licensing deals, Gemstar-TV Guide is rebuilding. But its financial prospects still tend to be overshadowed by the legal travails of its former management.

In June, the SEC brought a civil action against Yuen and Leung alleging they'd inflated Gemstar's revenue by \$223 million over two years.

The suit alleges a catalog of financial misrepresentation, including recording revenue under expired, disputed, or non-existent agreements and switching revenues from its media and licensing business sectors to its ad sector.

So far, News Corp. has been able to keep itself above the legal fray. The company has not been named in any of the government cases, nor do any of the civil class-action suits directly implicate the conglomerate.

But in the post Sarbanes-Oxley era, where renewed pressure to clean up boards of directors and hold CEOs accountable, Gemstar illustrates just how important oversight can be.

Its transgressions were potentially far more egregious than AOL's and easily more bizarre than Worldcom given the mysteriously duplicitous way Yuen allegedly managed the business.

"We want to know whether the Gemstar board exercised appropriate control over their CEO," says Jeffrey Krinsk, an attorney pursuing another shareholder complaint against Gemstar. "News Corp. is not necessarily immune from liability."

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